THE FISHERIES COMMISSION

AND THE

FORTUNE BAY AFFAIR.

UNITED STATES CITIZENS TURN QUEEN'S EVIDENCE.

Mr. Secretary Evarts and the Halifax Award.

Authentic intelligence from Washington states that a formal claim for specific damages has been made by the United States Government for alleged "injury and loss," occasioned by the interference of certain inhabitants of Newfoundland with New England herring fishermen, at Fortune Bay and elsewhere, about the beginning of last winter. The claim alleges that the fishing in which the claimants were hindered forms part of the privileges acquired by United States citizens under the Treaty of Washington, and that therefore they were molested in the lawful enjoyment of rights paid for inclusively by the American nation in the Halifax Award. These damages are laid on behalf of the owners of twenty-one Gloucester fishing vessels, ranging from $2,491 to $6,309 each.

It does not appear that the deputation of petitioners who lately interviewed Mr. Secretary Evarts, and lobbied the Senate and Congress, really expected to reap any direct benefit from their extraordinary claims, but simply plied them for the indirect purpose of prejudicing public sentiment and influencing executive action in the direction of restoring to fish dealers, in New England, the privilege of limiting supplies of Canadian caught fish to United States consumers, and thereby enhancing the market value of their own inferior catch. They petitioned for an "immediate abrogation" of the fishery articles of the Washington Treaty. The report says: "They gave as a reason for asking "for the abrogation of the Treaty that, unless it was done at once, the fishery trade will "be ruined. The Canadians were enabled, under the Treaty, to promptly stock the "American market, while the catch of the Gloucester vessels was delayed several months, "and when they arrived home there was comparatively no market for their labor." They seemed to consider that the Treaty was made for the exclusive benefit of Gloucester merchants. Mr. Evarts is reported to have promised the interviewers that these claims would be "vigorously pressed," also, that he would endeavour to effect an early termination of the fishery clauses of the Treaty; failing which, the required notice would be given in order to terminate them in 1885. All of which merely fulfils Mr. Evarts' previous suggestion made by a despatch of 27th September last, to Mr. Welsh, in the following words:—

"It is still the opinion of this Government, that the possession of our own market "is of vital importance to the Maritime Provinces, and such possession a formidable "menace, if not a fatal wound, to our own fishing interests. I do not think that I mis-"understand, or mis-represent, those interests when I say that, standing as we now do, "midway in the Treaty period, it would be better for those interests to surrender the "enjoyment of the fishing privilege of Article XVIII for the remaining six years of the "twelve, upon a resumption, by the Government, of the control of our own market for "this unexpired period." Therefore, a course which seems to result from "new and "convincing information," elicited by recent inquiries—*ex parte*, of course—is, after all, but the foregone conclusion expressed by Mr. Evarts, in September last, in his labored review of the proceedings of the Halifax Commission.

The whole correspondence exhibits some very remarkable contradictions between Mr. Evarts' elaborate arguments against the Halifax Award and his acquiescence in these Gloucester claims. Lord Salisbury's admirable replies to the United States

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Secretary of State derive additional force from the significant admissions implied by the present sequel. Although the matter more immediately concerns Newfoundland, the facts of the Fortune Bay "outrage," and the consequent claims for indemnity, are highly interesting to Canada. Having taken special pains to verify the particulars from impartial and trustworthy sources, I state, with entire confidence, that they afford no just or equitable grounds for compensation. However unfortunate they may have been, as are all difficulties occurring between neighbors, they nevertheless appear an almost providential contribution to the interests of justice involved in the so much disputed findings of the Halifax Commission. Canadians who have been scolded ever since the issue of that inquiry, because of the "monstrously excessive" award, and were told officially and unofficially that the privileges for which it was made are, in the very recent words of Senator Edmunds, "practically worthless," will now see on how slight a pretext American fishermen can induce their Government to formulate claims for damages, to be "vigorously pressed," because of heavy pecuniary loss inflicted on the New England fishing interest, whilst at the same time they manage to convince the United States Government that the freedom of our inshores, secured by treaty, and partially paid for in the Halifax Award, are of no value or service to them whatever. The savagely abused Umpire and his berated colleague, the American Commissioner, are unwittingly vindicated, and henceforth they may smile in triumph if not in peace.

The members of the deputation from Gloucester are said to have been "examined "at great length," by Mr. Evarts; but it does not appear that the American Secretary requested them to explain this discrepancy. Probably Lord Salisbury will not similarly overlook it.

The main facts of the Fortune Bay affair are undisputed. A place called Tickle Beach, in Long Harbour, Fortune Bay, Newfoundland, is a favorite resort of herrings at spawning time. The customary mode of fishing for them by resident fishermen is with hauling seines and gill nets, under certain statutory regulations, designed to prevent them from injuring the fishery. Americans use purse-seines employed during other parts of the season for mackerel fishing. These seines enclose vast quantities of fish, and are sometimes fastened on the beach for several days at a time, keeping the enclosed fish alive until the weather is cold enough to freeze the herrings, or the vessels are ready to load them. Where a net of this description is attached to the shore, no other nets can be used until it is drawn and emptied. A gang of smaller seines can be used for a like purpose. This method of fishing is called "in-barring," and is unlawful, as well as obstructive to other fishermen, and injurious to the local fishery. It is admitted by the documents fyled in support of the present claim, that the petitioners, when molested, were actively fishing with their immense purse seines, at a time and in a manner prohibited by the provincial statutes, which Mr. Evarts contends are incompetent to restrain treaty rights. The same evidence establishes that the interrupted fishing in question is *not* one of the privileges secured to United States citizens by the Treaty of Washington, because it was prosecuted from the beach, and the American fishermen were actually landed upon the strand, and hauling their nets ashore when interfered with. Judge Foster, the able and indefatigable Agent and Chief Counsel of the United States, at Halifax, insisted—I quote his words from page 209 of the Official Record—that:—

"No rights to do anything upon the land are conferred upon the citizens of the "United States under this Treaty, with the single exception of the right to dry nets and "cure fish on the shores of the Magdalen Islands, if we did not possess that before; "no right to land for the purpose of seining from the shore; no right to the 'strand "'fishery,' as it has been called; no right to do anything except, water-borne on ours "vessels, to go within the limits which had been previously forbidden."

Again, at p. 215, Judge Foster insists:—"So far as the herring trade goes, we could "not, if we were disposed to, carry it on successfully under the provisions of the Treaty, "for this herring business is substantially a seining from the shore—a strand fishing, a "it is called—and we have no right anywhere conferred by this Treaty to go ashore and "seine herring any more than we have to establish fish-traps." How, then, can Mr. Evarts claim, as he does in his despatch of 28th September, and now repeats, to Mr. Welsh, "that peaceful occupants of these fishing grounds, pursuing their industry under "a claim of right secured to them by Treaty," have sustained damages exceeding one hundred thousand dollars?

This unfounded claim reveals other and still more important inconsistencies in Mr. Evarts' contention. In all of the celebrated State papers belittling the value of the privileges acquired by the Treaty, and endeavouring to invalidate and evade the Halifax Award, ultimately paid under protest, Mr. Evarts contends that the inshore "mackerel fishery" alone was the "very limited subject" of acquisition and value determinable by the Halifax Commissioners—"the single and fragmentary matter" referred to their "impartial appraisement." The chief communication which accompanied the papers laid before the American Senate was Mr. Evarts' review of the proceedings of the Fisheries Commission. This review hinges on the following argument:—

"It will appear indisputably upon the proofs that the practical measure of the concession to the "United States of Article 18 was the ground of the participation by our citizens in the inshore "fisheries of the Gulf of St. Lawrence; that is to say, of the free and equal right to take part in the "fisheries within the three-miles line, instead of being excluded therefrom as under the Convention "of 1818. *It also appears from the proofs that the fishery thus opened to us was a mackerel fishery within "that line. This concession then constituted the whole subject and measure of any pecuniary value which "would enter into any award against the United States. What the pecuniary value of this participation in "the inshore mackerel fishery was formerly estimated at constitutes the extreme limit of any possible award "against the United States.*"

From the value of the British concessions, thus whittled down, the Commission was to deduct the pecuniary value of reciprocal concessions made by the United States; and any balance thus produced "should constitute the award justifiable under the Treaty." This was precisely the ground taken by Judge Foster at Halifax. He said (p. 220):—"Whatever benefit the citizens of the United States are proved to derive *from the "inshore mackerel fisheries*, within three miles of the shore of the Gulf of St. Lawrence, "for that you are to make an award, having regard to the offset, of which it will be my "duty to speak at a later period." There could be no mistake about this limitation, since Mr. Evarts reiterates it in his correspondence with Mr. Welsh, from which the following quotation is made:—

"It seems to this Government quite certain, then, that upon a correct exposition of "the submission of the Treaty, and the concurring action of the two Governments in "the production and application of what they deemed appropriate proofs, *what the "pecuniary value of our participation in the inshore mackerel fishery of the Gulf of St. "Lawrence was fairly estimated at, constituted the extreme limit of any possible pecuniary "award by the Halifax Commission against the United States.*"

Yet Mr. Evarts promises to press claims to indemnity for losses sustained by "American fishermen actively engaged *in the herring fishery on the coast of Newfoundland, "especially in the neighbourhood of Long Harbor;*" and instructs the American Minister at London to represent that such deprivation of rights secured to them by the Treaty has resulted,—"Beside the great loss of property, in the vessels being obliged to return "to their home port in ballast, and also abandon their fishing enterprise for the season. "When it is remembered at what considerable expense the preparations are made for a "season's fishing in these northern latitudes, and that very many of the men, both masters "and mariners, embark their all in the enterprise, the serious character of these losses "may be partially understood." Is it possible that these are the same men from Gloucester who have convinced the United States Government that the fishing privileges acquired for them by the American nation, of which the herring fishery at Fortune Bay is but a fraction, are, in fact and truth, "practically worthless"? It is scarcely credible that the United States Secretary of State maintains, in sober earnest, that the inshore mackerel fishery is the sole appreciable privilege acquired by his countrymen in the Treaty of Washington, and the only element of pecuniary valuation submitted to the Halifax Commission. Judge Foster maintained that, except "a little jigging for squid," there was no evidence before the Commission "of fishing in the territorial waters of "Newfoundland" by American fishermen, and that it was certain there never would be. Doubtless, Judge Foster relied on the testimony of the singularly disinterested witnesses from Gloucester who seem now to be the trusted informants of Mr. Evarts, and the very inconsistent claimants and clamorers at whose instance so much fuss has been and is still made about the Canadian fisheries. Many of the present sufferers testified at Halifax, and seemed almost indignant at the idea of the inshore fisheries of Canada and Newfoundland being of any value whatever to the fishing interests of New England. They said they would prefer to take

their chances of drifting about the inshores and having a vessel seized now and then, if the duty on Canadian caught fish should be restored so that they could charge their own price to American purchasers and domestic consumers. But now we meet them testifying that they make about one hundred voyages each season for frozen herrings to Newfoundland, and that by taking them with their own crews and seines the cost is merely nominal, as the same seines used in mackerel fishing can be fished for herrings. Also that in a very short time, even one day, they can catch enough to load the whole fleet, sometimes five or six thousand barrels at a haul, if only allowed to land on the beach and fasten their lines ashore, which the Treaty gives them no right to do. Because all these advantages which they *now* claim to be entitled to "under the Treaty of Washington" were not fully enjoyed last winter, more than twenty vessel owners and their crews swear that they have lost about five thousand dollars each. Let us be thankful for this admission. If the herring fishery alone, at a strip of sandy beach in one small harbour inside of Fortune Bay, is worth so much for one season, its worth for twelve years should be considerable. Several months' fishing each year, during twelve years, for various kinds of fish, in which several hundred vessels engage, on all the Gulf shores of Canada and other parts of Newfoundland, ought certainly to be, according to their own shewing, worth very much more than the United States have so reluctantly paid in the Halifax Award.

The foregoing observations are confined to the case of Newfoundland. Their bearing on the Canadian case is obvious. I am not at liberty, as a public officer, to discuss the particulars of the latter outside of official transactions. Otherwise, it could be easily shown that the depreciatory estimate of the value of inshore fishings conceded by Canada, and the hackneyed arguments against the Halifax Award, which have for so long prejudiced public opinion among our friendly neighbors, are equally inconsistent and quite as susceptible of complete refutation. They are familiar to everybody who has ever had any official connection with the fisheries business. President Grant and General Butler amplified them and promoted them to the dignity of a Presidential Message. The final settlement of disputes at Washington, in 1871, was rendered impossible by their existence. They were nursed by Joint High Commissioners Fish and Hoar, who respectively bequeathed them to the Department of State and the United States Senate, to be fathered in their turn by Mr. Secretary Evarts and Judge Edmunds. They were reproduced at Halifax, but were not unqualifiedly accepted by an impartial tribunal; and, notwithstanding their damaging collisions with counter testimony, are on public and diplomatic duty still.

The Halifax Award was a national disappointment and public surprise, chiefly because the American Government and people have suffered themselves to be systematically misled by interested statements, specious misrepresentations, sectional influences, and unscrupulous agitation. They have persistently disbelieved that there was any other than an American side to the Fisheries Question, or that Great Britain would ever approve the national instincts and uphold the patriotic views with which Canadians loyally adhere to their fishing privileges, regarding as of inestimable value the birthright which they possess in the sea-coast fisheries of this Dominion.

W. F. WHITCHER.

RIDEAU BANK, Ottawa, 6th Feb., 1879.